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Mr. Vivona said as far as the buildings go we have already approved the free standing bathrooms and amended that as you want to keep them in the existing farm house. The minimal bump out you are doing is on the sale side of the property and also on the inside away from the street. Mr. Vivona did not see any issue there. The farmhouse itself, as you stated, is an office and not a year round residence. There is also a deck proposed so you can look out over the property. That part is pretty straight forward. A lot of the other variances are due to a change in the reassessment value of your land development.

Mr. Brill said the Tax Assessor changed the assessment a few years ago.

Mr. Vivona noted that there wasn't any new construction going on; everything is existing and it's just realigning the lots to be one lot which causes two houses to be on one lot. Again those are temporary living accommodations.

Mr. Brill said they were.

Mr. Vivona, to clarify, there are multiple lots here. You are only talking about consolidation of two lots. One lot currently contains the area where the animal enclosure is and also they include two farmhouses (one on each lot) that are being consolidating. You are consolidating those two lots into something that will be slightly less than 5 acres.

Mr.Brill said it would be 4.96 ac.

Mr. Vivona asked if the reason for doing that is to make that lot applicable to farmland assessment.

Mr. Weber said with regard to the Farmland Assessment, these are contiguous properties to the main farm and under the Farmland Assessment Act that entitles him, for tax purposes, considered part of that. When we put the change into the Tax Assessor he said no. When we went to the tax court it was decided that we come to the Board in order to confirm that it was approved. In terms of the consolidation it produces 4.96 acres that is something under the requirement for your R1 zone. When keeping animals you have to have 5 acres. If the Board feels that avoiding the variances by keeping the lots the way they are then that is something that Mr. & Mrs. Brill would accommodate. It really doesn't change within the field. It doesn't change it from a farmland standpoint. It is really a mechanism in response to seeing how to best manage that parcel.

Mr. Vivona – since the Township has an ordinance which requires that farm animals in a residential zone have a 5 acre area then your proposal was to seek a minor variance for .03 acres to try to get something which is more conforming than currently exists.

Mr. Hyland asked if he could be shown which lots are combined.

Mr. Brill said it would be lot 143 and 142.

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Mr. Weber said in terms of the farming ordinance that would permit keeping them. As Mr. Brill indicated he has had animals for years and would like to keep that part.

Mr. Vivona said that the animals, until the Tax Assessor, were there legally. There was no issue before. Now the tax assessment forces him into the market garden thing – now the animals that had been there legally before now becomes an issue.

Mr. Shaw said what it becomes - market gardens are a conditional use and if everything complied with everything then it's a Planning Board issue. Where there is a variance requested from one of the conditional uses, such as you are not allowed to have farm animals that is a variance conditions which is one of the things being requested.

Mr. Weber – to follow up on that said the standard is whether or not the property can accommodate/deviate from that conditional use standard. The use is permitted but you have to have a variance from the condition. We are arguing that the animals have been there on the farm for as long as he has owned it. They have been there for a number of years and are part of the farming aspect. The other variance with regard to the conditional use standard is again the farming Market Garden Ordinance which talks about vegetables, fruits eaten for consumption. There is nothing being grown on these lots for consumption.

Mr. Hyland asked if you could explain what the Tax Assessor did that made all of this happen.

Mr. Weber said in 2007 after Mr. Brill had purchased one 142 and 143 and incorporated it into his farm, pursuant to the judgment of the Honorable Reginald Stanton, which allowed for the extension of the farm which regulates plot 140 the Zoning Officer said he, disagreed with this. How come you are extending it? We corresponded with him in 2007 and provided him with the backup information provided by the Board of Adjustment Resolutions with regard to this and as a result the Tax Assessor went with the Farmland Assessment and the Zoning Officer said they were permitted under the prior history. Even prior to that in 2003 the ten acres across the street were farmland assessed. Again, there was a change in the tax assessor appointed.

Mr. Hyland - so when the new tax assessor came in everything was okay.

Mr. Weber said that was correct. You have to apply every year for farmland assessment so when the Brill's applied for Farmland Assessment he denied it saying that it was not permitted under our ordinance. That is when I lawyered and filed notice of appeal. We took an appeal to the tax court and took our position saying that we were entitled to proceed ahead. It was when I was standing outside in the County down in Newark that Carl Woodward (Township Attorney at that time) came up to me and said we have a farm ordinance which meant that we could back to this Board. This Board has been regulating this farm for approximately 40 years. Rather than continue with the legal dialogue where the lawyers were say "alright, we have this right under this statute and then the Township saying no we have this right under this one" this was the practical solution. Mr. Woodward said to apply to the Board of Adjustment under the Market

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Mr. Shaw said this property is a nonconforming use as an agricultural property and was subject to some fairly extensive litigation associated with the Right to Farm Act. All of these improvements (greenhouses, etc) were all treated as a Use Variance because it was not a permitted use in the zone. There was a finding by the court that it was a former nonconforming use and whenever it was expanded they would come back to the Board of Adjustment because we had jurisdiction over that. What is being proposed here is if it's made a market garden it is now a conditional use. It is still in front of us because they are looking for variances from the conditional use requirements. What it would become is a conforming approved conditional use as opposed to a prior nonconforming use. The property is currently a prior nonconforming use as an agricultural use in that zone. All of the provisions for greenhouses and things of that sort, if you have property which is used for farmland you are allowed to have ancillary uses such as greenhouses, sale areas to the public. What this will have the effect of doing is, it will no longer be treated, should the Board approve it, as a market garden with these conditional use variances. The property will henceforth no longer have to be treated as a prior nonconforming –

Mr. Weber said not quite. It will still be under the Right to Farm and be under the jurisdiction of the judgment. The Board will still retain jurisdiction of the main farm. These are the ancillary lots that would be brought under the market/farm ordinance. It solves the issue in terms of the conditions of the Township as to whether or not the farm can expand there, or whether they need the approval of the Board. Once the Board approves the request for the conditional use then it is a permitted use which is regulated under the conditional use ordinance. They can continue as it has for the past thirty plus years. It would not be included as part of the market. The main area is not part of the application to convert it to market garden. It is only part of the application because we are requesting to change the bathroom and adding/revising one of the farm houses to incorporate the bathrooms.

These periphery properties add to the buffer. They provide the support from the farm. The lot across the street had the wood lock management plan which was approved by the DEP. There are uses as in terms of growing plants which allow them to be a buffer peripheral property.

Mr. Vivona asked if the property across the street would be part of the market garden.

Mr. Weber said that was correct.

Mr. Hyland to clarify – Lot 144 will be Market Garden Lot 142, 143 would be potential market garden if we approve it and Lot 44.18 would not be market garden if we approve it.

Mr. Weber said that was correct.

Mr. Hyland asked if it was possible to approve some of these and not approve others. Is it all in one?

Mr. Shaw felt they were all inter-related. He would say it was up to the applicant to decide. If the applicant did not want to pursue something they could say so otherwise it is being presented to us as an all or nothing.

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being requested is a conditional use variance from Section 30-99.10a and 10 e2 which prohibits the keeping/grazing of livestock/poultry. Interestingly enough this was once a chicken farm. This is a long time farm area. The Farm now has three donkeys and a miniature bull. These are great for the kids that come to the Farm with their parents as it allows them to enjoy the farm pets. Also a C1 variances is needed from Section 30-78C as you have those five acres for the animals in the R1 zone and the average of the lots that the animals are on is 4.97 acres. Section 30-96 permits one principal use on a lot and lots 142, 143 have farmhouses so obviously when combined there are now two farmhouses on one lot (pre-existing). Ordinance 30-96.13A permits no more than 2 accessory buildings on Lot in R1 zone. There are on lots 142, 143 11 accessory buildings. Dealing with the C1 variance relief which is probably the easier one, these are all special circumstances in a sense hardships as they are pre-existing conditions. There are existing structures that are lawfully existing structures and are consistent with a successful farm operation. The benefits outweigh the detriments as they are pre-existing structures. He did not see any detriments. The deficiencies from the 5 acres is minor and will not have much appreciable visible difference in terms of the animals and also the applicant is agreeable for some limitations on the number of animals.

In the terms of use variance prohibiting the raising of livestock, poultry, etc. we have to show that the site can accommodate the deviations with no substantial detriment to the neighborhood. They are part of the farm and they are a public attraction. The animals are well taken care of. They are not next to a residential use. The applicant is willing to do the farm conservation plan. It would be relevant to his type of operation because in preparing for this application I contacted Federal Government which has a Conservation Farm Ordinance. He pointed out that Brill's have a history of beneficial farm practices.

Mr. Weber asked Mr. Madden if it was his recommendation to the Board that if this were to be approved there would be a farm conservation plan.

Mr. Madden said he agreed with that. He just wanted on the record that the conservation plan would be relevant to the type of operation the Brill's have. It wouldn't be something the Federal Government would require which would be for major development.

There really wouldn't be any detriment to the keeping of the animals on the property. He felt the benefit of this whole application is in bringing the application in to compliance with the Market Garden Ordinance. He commented that the Market Garden Ordinance was a creative Ordinance. Having seen other operations of this nature he commented that this was really a nice operation. They have variety and good quality. Their displays are kept nicely in fact the entire operation is one of the best he has seen. As proof of that obviously the applicant has done quite well and the township benefits. It's almost like a little feature of the Township.

Mr. Michaels – the distance between the livestock enclosure and the adjacent lot 144. Isn't there a residence?

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Mr. Ruschke said basically what they had in Ecco Sciences was to have their consultant go out and actually do a delineation approved by the DEP. I asked for an accurate delineation so I am sure they will do that. I am sure they will propose exactly what is on the plan that will go to the DEP.

Mrs. Stillinger questioned for wetlands you have to have the delineation on the plan.

Mr. Weber said with the area they have a 150 ft. buffer from the established tributary. Basically the entire site is looked at as wetlands.

Mrs. Stillinger – except for your proposed storage on the west side.

Mr. Weber said that was part of the transition area. It comes down to “what you see is what you get”

Mrs. Stillinger thought it may not be in the transition area. You have to take into account the distance from the property to all the wetlands.

Mr. Shaw said we could reference in the Resolution the areas that are approved and because of the overall conditions there is no need for a separate LOI.

He wanted to go through the items to make sure that we address them all to the extent that you believe they need to be addressed. Request the applicant to reduce the effects of various cover. The only change they are making in the site plan currently is to basically reduce the amount of impervious coverage by not putting in a separate building where there bathrooms were going to be; to make a slight expansion in the size of the building. That is the only sight plan change which is described or provided for in the application. There is actually a reduction in impervious coverage because they are taking out what was a separate building. Re: Lot 48 there be no trees removed so the concern about protecting the other potential endangered species will not be an issue. There was an onsite inspection of the woodland properties and has been determined to be compliant as a plan and with NJAC. The activity on the land is appropriate for the existing resource information reported on the woodland data form. The soil on lot 48 it should be tested for pesticides. They have addressed the underground storage tank. The wetlands will remain undisturbed in accordance with what the approvals are. There is forest management plan but there is a separate conservation plan that is going to be proposed. What they are proposing to have is a conditional approval. The Board would probably suggest that it would be subject to the review/approval of the Township Engineer as a condition of approval. It has been stated here what is permitted on Lot 48 and has been described as: the area of boxwood; planting as a quarantine or area for other things that arrive from a horticultural standpoint; area that might sometime be subject to additional hay removal and the area previous approved by the state for the woodland management plan. We can put that in the resolution.

Mr. Stillinger thought that would be fine as long as there are no additional wetlands substantially disturbed.

